



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20220864SW000000D966

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTP/2302/2021 -APPEAL / 3253 - 3258
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-91/2022-23**
दिनांक Date : **24-08-2022** जारी करने की तारीख Date of Issue : **26-08-2022**
- श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित
- Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **ZQ2411200184790** dated **13.11.2020** issued by The Assistant Commissioner, CGST, Division-I, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Dev Engineering Co, 41/2/2-1, Arvind Estate, Opp Ambica Hotel
C.T.M. Amraiwadi, Ahmedabad, Gujarat-380026**

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



ORDER IN APPEAL

M/s.Dev Engineering Co, 41/2/2-1, Arvind Estate, CTM Amraiwadi, Ahmedabad 380 026 (hereinafter referred to as the appellant) has filed the present appeal on dated 28-10-2021 against Order No.ZQ2411200184790 dated 13-11-2020 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, CGST Division I (Rakhial), Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AADFD0943L2Zk has filed refund claim for refund of Rs.3,99,607/- on account of ITC accumulated due to inverted tax structure. The appellant was issued show cause notice reference NO.ZQ2410200295022 dated 23-10-2020 for rejection of refund on the reason of wrong ITC claim and on the following reasons;

Clarify difference in adjusted total turnover and tax paid and payable in GSTR3B and 1. ITC of input service inadmissible-Not No.26/2018-CT dated 13-6-2018. Net ITC and thus refund can't be quantified u/r 89 (5). Not.49/19 CT dated 9-10-2019 and 75/19-CT dt. 26-12-2019 complied or not.

3. The appellant filed reply to SCN in Form GST RFD 09 reference No.ZQ2410200295022 dated 31-10-2022. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant due to wrong ITC claim and that claimant didn't clarify about compliance of Not 49/19-CT dated 9-10-2019. Accordingly refund is rejected for non compliance of SCN under Section 54 of CGST Act, 2017.

4. Being aggrieved the appellant filed the present appeal on the following grounds:

That they refute all the accusation fabricated against them in totality. The contentions made in the show cause notice are fallacious and incorrect and are based entirely on assumption and presumptions and without appraising the facts and circumstances in the legal perspectives. The appellant denied to have contravened any Rule/provision of CGST Act, 2017/CGST Rules, 2017. The appellant submitted that the proceeding as initiated vide3 impugned show cause notice are only arbitrary and against the legislative laws. At the time of implementation of GST, three kinds of tax structure were implements to enable tax payers to take the credit against on another. In this way guaranteeing 'one nation, one tax'. So they are bound that they have no claim refund of input ITC of services and they have clarified and submitted all the related documents, then also the officer has not considered their refund and reject the claim. That all refund related documents provided under Annexure which were not relied in show cause notice as they are liable to pay refund under inverted structure hence their raw materials ITC is 18% and their output is @ 12%. So they requested to consider the same and grant refund.

5. Personal hearing was held on dated 21-7-2022. Shri Amit Prajapati authorized representative appeared on behalf of the appellant on virtual mode. He stated that they have nothing more to add to their written submission till date.



6. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and document available on record. At the outset I find that impugned order was communicated to the appellant on dated 13-11-2020 and present appeal was filed on dated 28-10-2021 ie after a period of 11 months, which is beyond three months time limit stipulated under Section 107 of CGST Act, 2017. However as per Hon'ble Supreme Court's Order dated 10-1-2022 in suo motu writ petition (C) No.3 of 2020 in MA No.665/2021, excluding the period from 15-3-2020 till 28-2-2022 in computing time limitation and providing 90 days extension from 1-3-2022 in filing appeals, I hold that the present appeal is not hit by time limitation factor.

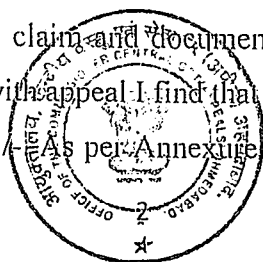
7. I find that in this case the appellant has filed refund claim for refund of ITC accumulated due to inverted tax structure which was rejected due to wrong ITC claim and non compliance to Notification No.49/2019-CT dated 9-10-2019 I find that vide Notification No.49/2019, amendment were made under various Rules of CGST Rules, 2017. It is not specified either in the show cause notice or in the impugned order, the compliance to which Rule amended vide above Notification is required from the appellant. However, I find that on the issue of ITC and refund the following amendments were made under CGST Rules, 2017.

*3. In the said rules, in rule 36, after sub-rule (3), the following sub-rule shall be inserted, namely:-
“(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.”.*

6. In the said rules, in rule 91, - (a) in sub-rule (3), with effect from the 24th September, 2019, after the words “application for refund”, the words “on the basis of a consolidated payment advice:” shall be inserted; (b) after the sub-rule (3), with effect from the 24th September, 2019, the following sub-rule shall be inserted, namely:- “(4) The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (3).”.

8. Apparently the above amendment made under CGST Rules, calls for action on the part of sanctioning authority while processing refund claim. In case of amendment made under Rule 36, ceiling was placed for availing ITC under the circumstances mentioned therein which also need to be examined while processing refund claim. Therefore, I find that amendment made under CGST Rules, 2017 vide above Notification does not calls for any compliance from the appellant for admissibility of refund to them and hence I find that rejection of refund due to non compliance of Notification No.49/2019-CT dated 9-10-2019 is not a legally justifiable and sustainable reason for rejection.

9. Regarding wrong ITC claim, I find that the impugned order is silent to the reason as to how the appellant has availed wrong ITC claim and documents in which ITC was wrongly availed. However, from the documents filed with appeal I find that the appellant has claimed refund taking into account net ITC of Rs.19,38,871/- As per Annexure B total eligible ITC, excluding ITC on

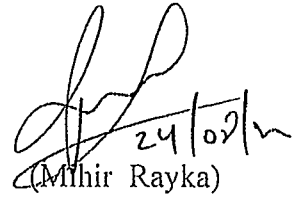


input services, was shown as Rs.19,38,871/- and Statement 1A show net ITC on inputs/input services of Rs.19,87,588/-. Therefore, it is apparent that the appellant has correctly claimed refund taking into account ITC availed on inputs only which I find is in accordance with Section 54 (3) of CGST Act, 2017 read with Rule 89 (5) of CGST Rules, 2017. Therefore, in this case I find there is no wrong ITC claim so as to reject refund to the appellant and hence rejection of refund on this ground is also not justifiable and sustainable reason.

10. In view of above, I hold that the impugned order passed by the adjudicating authority rejecting refund on the grounds mentioned therein is not legal and proper and deserve to be aside. Therefore, I allow this appeal with consequential benefit to the appellant. I further order that any claim of refund made in consequence to this Order may be dealt with by the appropriate authority in accordance with the provisions of CGST Act 2017 and Rules framed thereunder. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

अपील कर्थाद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है |


11. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


(Sankara Ramjan B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad
By RPAD

To,

M/s.Dev Engineering Co,
41/2/2-1, Arvind Estate,
CTM Amraiwadi,
Ahmedabad 380 026

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division I (Rakhial) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

